

EXHIBIT H

NO. 76321 - 6

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

DAVID McDONALD, ET AL.,

Petitioners,

v.

SECRETARY OF STATE SAM REED, ET AL.,

Respondents,

and

GOVERNOR-ELECT DINO ROSSI, a citizen and elector of Washington,
and the WASHINGTON STATE REPUBLICAN PARTY, an
unincorporated association,

Applicants-Intervenors.

INTERVENORS' OPPOSITION TO PETITION BY ELECTORS AND
PETITION FOR WRIT OF MANDAMUS AND OTHER RELIEF and
MOTION IN SUPPORT OF EMERGENCY PARTIAL RELIEF

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added). Thus, a tabulation is a part of a canvass, but a canvass involves additional tasks beyond a tabulation. In contrast, the definition of “recount” is limited to “retabulating ballots.” RCW 29A.04.139.

- RCW 29A.60.210 provides that a canvassing board may “re-canvass” ballots if there is “an apparent discrepancy or an inconsistency in the *returns*,” but must conduct such activity on or before the last day to certify the election. (emphasis added.) A recount, by contrast, takes place after the certification of the election and is governed by entirely different statutory provisions.

Furthermore, the discrepancies and inconsistencies that allow a re-canvass are limited to those “in the returns” and are not so broad as to include revisiting previous discretionary decisions made by canvassing boards as to whether a signature on an absentee or provisional ballot matched the original voter registration signature. RCW 29A.64.210. The “returns” are referred to in a number of sections of Washington’s election code. The references demonstrate that the words “the returns” are unquestionably a reference to the number of valid votes cast in the various races and nothing more. As an example, RCW 29A.60.120(3) provides that “[t]he *returns* produced by the vote tallying systems, to which have been added the counts of questioned ballots, write-in votes, and absentee votes, constitute the official returns of the primary or election in that

county.” (emphasis added.) These “returns” do not include rejected absentee or provisional ballots – they are only the numbers of reported ballots and votes.

Apparent discrepancies or inconsistencies in the returns from this election – the number of ballots cast and votes counted for specific candidates – do not provide a basis for the relief asked for by the Petitioners – a review of all absentee and provisional ballots that were previously rejected by canvassing boards. These rejected ballots are not part of “the returns.” Additionally, Petitioners have made no showing of any discrepancy or inconsistency in the returns – which is a necessary precursor to a recanvass under RCW 29A.64.210. Finally, even if the boards are sent back to recanvass the ballots or voting devices in certain precincts so as to address numerical discrepancies, the boards do not revisit rejected ballot decisions.

What Petitioners seek is not a recount, but a total recanvass that even goes beyond what the statute authorizes for a recanvass. They seek to revisit issues such as prior canvassing board decisions regarding the validity of ballots rather than simply discrepancies with the returns. The “returns” are not the absentee and provisional ballots rejected in prior decisions of the canvassing board. “Returns” are the numbers, the number of votes for candidates. Therefore, a recanvass is not a re-review of the

canvassing board decision on the validity of signatures, because such decisions are not “in the returns.”

- **WAC 434-262-170** distinguishes between a “tabulation” and the decisions made by canvassing boards regarding the validity of a ballot: “[o]nce the issue of validity has been determined, the ballots will be tabulated if applicable, stored, and retained the same as regular voted ballots.” Under this provision, as with the others, the process of *tabulation* of votes is distinct from the prior process of determining the validity of ballots by the canvassing board.

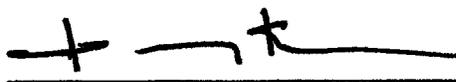
Statutory provisions governing the physical custody of the ballots also demonstrate that a recount involves only those ballots previously determined to be valid and counted in a prior tabulation:

- **RCW ch. 29A.64** governs “Recounts,” and **RCW 29A.64.041** specifically details the procedures for a recount. That section states, in no uncertain terms, that at the time set for the recount, the authorities shall open the “sealed containers *containing the ballots to be recounted.*” (emphasis added). Thus, the only ballots to be counted during the recount are those contained in those sealed containers.

- **RCW 29A.60.110** provides rules detailing how to seal these ballot containers. That provision clearly states that only counted ballots may be placed in the containers: “Immediately after their

RESPECTFULLY SUBMITTED this 7th day of December,
2004.

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